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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,393	01/16/2002	Marvin Byrd		6190

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03/03/2003

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EXAMINER

LUM, LEE S

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,393

Applicant(s)

BYRD, MARVIN

Examiner

Ms. Lee S. Lum

Art Unit

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Other issues:

- i. "Brief Description of the Drawings" must be brief, and does not include element numbers.
- ii. "Detailed Description of the Invention" must clearly describe the invention, including element numbers.

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It is recommended that the spec be amended to conform as indicated above in order render an accurate description of the invention. Prior art references should be used as a guide.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed elements must be shown or the features canceled from the claims. As best understood, fig 5 is the only drawing including element labels – however, the elements do not correspond to those recited in the claims, and the presentation of separate elements are such that it is difficult to understand their integration into the invention. It is recommended that prior art references be consulted as to the preferred views and arrangements. No new matter should be entered.

Other issues:

- i. Figure numbers do not require the “#” symbol, and each individual depiction in the figure must be labeled, the label not solely a number, e.g., in fig 3, each depiction should be labeled “3A”, “3B”, etc.
- ii. The configuration of the chair frame in fig 2 is not described in the spec or claims.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The spec fails to clearly describe the invention because of omissions in “Description of the Invention” and the drawings, as discussed above.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Claims fail to clearly describe the invention because

a. Many elements cannot be identified in the drawings, as discussed above.

b. The following elements are unclear/unidentified:

i. "means for changing the spacing between side frame members"

(also, which side frame members?) - Claim 1,

ii. "means to raise/lower the seat" - Claim 1,

iii. "transverse frame members", "linear bearing" - Claim 2,

iv. "upper side members are arms", "sling means" - Claim 4,

v. "cantilevered seat", "torsion bar suspension" - Claim 5,

c. The following elements lack antecedent basis:

in Claim 1, line 4 - lower ends, line 6 - upper ends, line 8 - front,
line 10 - the spacing,

in Claim 2 - front ends,

in Claim 5, line 2 - only structural, line 4 - user, line 5 - surface,

in Claim 6 - front,

in Claim 7 - coupling.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

As best understood, **Claims 1-5** are rejected under 35 U.S.C. 102(b) as being anticipated by Radjenovic et al 5915709.

Re **Claims 1, 3 and 4**, Radjenovic discloses a lightweight wheelchair assembly comprising

Two lower side members 16,

Two rear members 60/62 pivotally connected to form an "X" with lower side members,

Including means 74/76 for pivoting to a horizontal and parallel position when the chair is collapsed,

Two upper side members 90 coupled to upper ends of the rear members (unidentified in fig 1, described in col 3, lines 44-46),

Wheels 30/54 mounted on the front and back, respectively, of the lower side members,

Seat (unidentified) supported on the upper side members,

Means for changing the spacing between side members (as best understood),

Means for raising/lowering the seat (as best understood), and,

Means for entirely collapsing the chair (via elements 74/76).

As best understood, re **Claims 2 and 4**, the patent discloses the recited elements.

As best understood, re **Claim 5**, the patent discloses the rear members as solely connecting the upper and lower side members, and, the remaining elements.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Radjenovic in view of Hull et al 5350184.


Radjenovic does not disclose a coupling means on the front of the lower side members for towing, while Hull shows this feature 10, including quick-release means 44/46. Although Hull does not specify that the towing vehicle is motorized, it is clear that Hull's invention can be applied to this type of vehicle. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include a towing means, as shown in Hull, so that the wheelchair may be safely transported by another vehicle, thus increasing applicability.

7. The prior art made of record, and not relied upon, is pertinent to the Applicant's disclosure, in addition to the art listed on the IDS filed 1/16/02: Friedrich 6302429, Slagerman 6264218, Slagerman et al 6227559, Rogers et al 6164674, Dugas 5984334.

8. Communication with the Examiner and USPTO

Any inquiry concerning this communication should be directed to Ms. Lum at (703) 305-0232, 9 am-6 pm, M-F. Our fax numbers are (703) 872-9326, 872-9327 for after-final communications, and 308-2571 for faxes with prior notice given to the examiner. Any inquiry of a general nature, or relating to the status of this application/proceeding should be directed to Customer Assistance at (703) 306-5771.

Ms. Lee S. Lum
Examiner
2/14/03



KEVIN HURLEY
PRIMARY EXAMINER